

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

GPD HOLDINGS, INC.,

Respondent,

and

Case Nos.: 12-CA-167404
12-CA-175527

UNITED STEEL, PAPER, AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO/CLC, LOCAL 8526

Charging Party.

MOTION TO ACCEPT NON-BOARD SETTLEMENT AGREEMENTS

Respondent GPD Holdings, Inc. ("GPD"), respectfully moves for an Order accepting the agreed upon Non-Board Settlement Agreements between GPD, the Union, and the alleged Discriminatee, Derek Saunders attached as *Exhibit A* and *Exhibit B* over any potential objection of the Region or General Counsel. For the reasons set forth below, Respondent's Motion should be granted.

INTRODUCTION

The Company vehemently denies that it has engaged in any unfair labor practice. Specifically, the Company did not bargain in bad faith with the Union or insist to impasse on any permissive subject of bargaining as alleged in 12-CA-167404 and did not discriminate against Derek Saunders because of any alleged Union activity as alleged in 12-CA-175527. Instead, it bargained in good faith with the Union and have reached an Collective Bargaining Agreement on all subjects and it lawfully terminated Mr. Saunders because he was involved in an accident

while driving a Company truck and failed to report it, instead attempting to cover up the accident.

BACKGROUND

A Petition was filed by the United Steel Workers (the “Union”) on February 18, 2015 in Case No. 12-RC-146539. *See* Petition filed February 18, 2015. On March 31, 2015, the election was held and the Union received the majority of the votes cast. The Company chose not to file any objections and the Unit was certified on April 10, 2015. The Unit included nine (9) employees – two (2) Customer Service Representatives, four (4) drivers, one (1) fork lift driver, and two (2) warehouse assistants. The parties promptly entered into collective bargaining, which, while difficult at times, ultimately resulted in a five (5) year Collective Bargaining Agreement (“CBA”) between the Company and the Union that was effective on November 1, 2016.

On February 9, 2016, before the CBA was finalized, Derek Saunders got into a car accident in a company vehicle. GPD 53 (the cited documents are collectively attached as Exhibit C). Mr. Saunders did not report the accident to his Supervisor. GPD 58. The Virgin Islands Police Department came to the warehouse looking for Mr. Saunders and explained the situation to his Supervisor. *Id.* Apparently, Mr. Saunders and the driver of the other vehicle made a verbal agreement not to involve the authorities and Mr. Saunders agreed to pay for the repairs. *Id.* After the driver of the vehicle made this agreement with Mr. Saunders, he called the owner of the vehicle who told him to call the police and make a report. *Id.* Mr. Saunders provided a written statement admitting that the car accident occurred and that he agreed to pay for the damages. GPD 53. Mr. Saunders was placed on an unpaid suspension for not reporting the incident immediately to his supervisor as required in the Company’s employee manual.

The Company then promptly notified the Union, writing an e-mail to Union Chief Negotiator and Staff Representative, Mr. Gerald Jackson, stating:

Dear Mr. Jackson: I am writing on behalf of GPD Holdings, Inc. regarding a tentative decision to terminate a bargaining unit employee. One of the drivers, Derek Saunders, was in a vehicular accident causing damage and did not report it to his supervisor. The Company only learned about it from the USVI police, when they came to the warehouse looking for Mr. Saunders. Mr. Saunders' statement regarding the incident is attached. His other disciplinary records also are attached. The Company has made a preliminary determination to terminate Mr. Saunders for violation of policy. Several of the policies violated here include:

SAFETY/SECURITY

2-135

The Company is dedicated to providing employees with a safe and secure work environment. We all play a vital role in assuring that work areas are kept safe, clean and secure. **Employees are required to report any safety hazards to their supervisor immediately and notify the supervisor of any and all accidents.**

GENERAL CONDUCT AND WORK RULES

4-100

The orderly and efficient operation of the Company requires that employees maintain discipline and proper personal standards of conduct at all time. Discipline and proper personal standards of conduct are necessary to protect the health and safety of all employees, to maintain uninterrupted production and jobs performance, as well as to protect the Company's goodwill and property. For this reason, the Company sets forth below its established work rules. An employee who fails to maintain at all times proper standards of conduct or who violates any of the following work rules shall be subject to disciplinary action, including discharge. This list of rules is not intended to be all inclusive and engaging in any other practices which may be inconsistent with the ordinary, reasonable, common sense rules of conduct necessary to the mutual welfare of the Company and its employees may also subject the individual to discipline up to and including discharge.

11. Violating any safety rules or practices or engaging in any conduct that may be a safety hazard.

DRIVER & WAREHOUSE EMPLOYEE POLICIES

4-110

Drivers and Warehouse Employees are equally important members of the Company's team. To ensure our customers receive safe, efficient and courteous service the following policies have been established:

4. Drivers/Warehouse employees shall immediately call their supervisor in case of any accident.

Mr. Saunders currently is suspended without pay pending a final decision.

Please contact me by e-mail by the close of business on Friday, February 12, 2016 if you would like to schedule a call to discuss.

GPD 51-57. Ultimately, the Union and the Company met in person on March 4, 2016 to discuss Mr. Saunders' discipline. GPD 43.

After that meeting and considering all the information and arguments presented by the Union at their meeting, the Company made the final decision to discharge Mr. Saunders for failing to immediately disclose the car accident to his Supervisor in an attempt to cover up the accident in violation of multiple company policies, as previously disclosed to the Union, effective March 8, 2016. GPD 38-39.

On March 16, 2016, the Union advised that it did not agree with the Company's decision to discharge of Mr. Saunders and requested another meeting. GPD 41-42. The Company again agreed and met with the Union on April 13, 2016. GPD 40-42.

On April 14, 2016, the Union sent a letter arguing that the Company's decision should be reversed claiming that the discharge constituted "double jeopardy" stating:

It is the Union's position that Mr. Saunders should be reinstated and made whole of all wages and benefits based upon the fact that the Company disciplined the grievant twice (verbal discussion and termination) for the same offense, which is considered double jeopardy.

GPD 37. At no time, during any of the meetings between the Company and the Union, did the Union allege that Mr. Saunders was being discriminated against for union activity.

On April 27, 2016, in response to the Union's request, the Company reaffirmed its decision to discharge Mr. Saunders. GPD 36.

On May 3, 2016, the Union filed the above captioned unfair labor practice charge alleging:

On or about March 9, 2016, the above-named Employer, by its officers, agents, and representatives, has discriminated in regard to tenure of employment by terminating employee Derek Saunders because of his union activity, and, at all times since said date, the above-named employer has refused, and continues to refuse, to employ Derek Saunders, because of his union activity.

The above-named Employer failed to notify and bargain with the Union prior to imposing the termination of Derek Saunders, as required under *Alan Ritchey, Inc.*, 359 NLRB No. 40 (2012).

ULP charge dated May 3, 2016. This ULP is the first time, after almost three (3) months of discussions, that the Union came up with the unfounded and untrue allegation that Mr. Saunders was discharged for union activity.

Moreover, the ULP alleged that the Company failed to notify and bargain with the Union prior to the discharge, which was not true. As shown above, the Company immediately notified the Union and bargained with the Union about the decision for over two (2) months, including approximately one (1) month between the incident on February 9 and the discharge decision on March 8, 2016. The Union has now retracted that incorrect allegation.

After the Company filed its position statement and before the Region completed its investigation and issued any complaint on this matter, the Union, Company and the alleged discriminatee, Mr. Saunders, reached a full settlement of that ULP that provided for immediate reinstatement of Mr. Saunders and another employee who had been involved in another vehicle accident several months later, who had also been discharged, but over who no ULP had been (or has been) filed. Both of the employees were to be reinstated on agreed upon Last Chance Agreements, without any back pay. Exhibit A. The Company and the Union also agreed upon the disputed Bargaining Unit work provision and have both executed a five (5) year CBA that is in effect from November 1, 2016 to October 31, 2021. Exhibit B.

THE SETTLEMENTS ARE CONSISTENT WITH *INDEPENDENT STAVE*

The acceptance of the agreed upon Non-Board Settlement Agreements in this case is

completely consistent with the considerations set forth in GC Memo 15-02: Guideline Memorandum Concerning Deferral to Arbitral Awards, the Arbitral Process, and Grievance Settlements in 8(a)(1) and (3) Cases (February 10, 2015) and *Independent Stave*, 287 NLRB 740 (1987). There, the General Counsel stated: the factors to consider are whether “(1) the parties intended to settle the unfair labor practice issue; (2) the parties addressed that issue in the settlement agreement; and (3) Board law reasonably permits the settlement agreement.” The General Counsel advises that a settlement must meet the standards set forth in *Independent Stave Co.*, 287 NLRB 740 (1987): (1) whether all parties agreed to the non-Board settlement; (2) whether the proposed settlement is reasonable in light of the alleged violation, the risks of litigation, and the stage of the litigation; (3) whether the settlement is free of fraud, coercion, or duress; and (4) whether the respondent has a history of violations or breaching settlement agreements.

In this matter, all of the parties that need to live with its terms - the Respondent, the Charging Party, i.e. the Union, and the discriminatee, Mr. Saunders, have all agreed and executed the Non-Board Settlement Agreement attached as Exhibit A and agree to be bound by it. Similarly, the Union and GPD have agreed to withdraw the prior charge in light of having entered the 5 year CBA as set forth in Exhibit B. The only party that does not consent is the Region that does not have to be worried about the enforcement of the Company’s rules, the financial health of the Company and potential liability of the Company in future situations, the costs and time required to continue fighting over these issues, or the potential damage to the relationship between the parties that the Region’s hard line position could cause.

Second, the agreed upon Non-Board Settlements are extremely reasonable in light of the alleged violations, risks of litigation, and the stage of litigation. While the alleged violation is

serious in 12-CA-175527, the Respondent vehemently denies that it discharged Mr. Saunders because of his Union activity, the Union never alleged that during the almost three (3) months that they discussed and negotiated over the discharge decision, and the Non-Board Settlement also provides for the reinstatement of another bargaining unit member who had been discharged, but over whom no ULP had or has been filed. Thus, in achieving this settlement, the Union got a significant concession that the Region could not achieve at a trial of this ULP Charge. Moreover, these Non-Board Settlements save GPD, the Union, and Mr. Saunders from the time and expense of preparing for and participating in what may be a multi-day hearing in St. Croix, when one of the Company's witnesses will need to fly in from Dallas, two (plus its counsel) will need to fly in from St. Thomas, and the Union's attorney could need to fly in from Pittsburgh. It does not make economic sense to expend more of the parties' resources for a multiple-day trial to litigate either issue that the affected parties have already resolved.

Third, there has been no fraud, coercion or duress.

Finally, the Respondent has no history of either violations or breaching settlement agreements.

In light of these factors, the circumstances of this matter strongly favor acceptance of the agreed upon Non-Board Settlements.

CONCLUSION

For the reasons set forth above, Respondent's Motion should be granted and the Non-Board Settlement Agreement attached hereto as *Exhibit A* and *Exhibit B* should be accepted.

WHEREFORE, GPD prays that the Administrative Law Judge issue an Order accepting the Settlement Agreements attached as *Exhibit A* and *Exhibit B* over any potential objection by the Region or GC.

Dated this 17th day of January 2017.

**OGLETREE DEAKINS NASH SMOAK
& STEWART, LLC**

By: 

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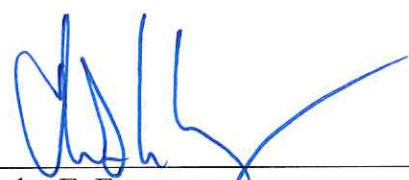
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of January, 2017, a .pdf copy of the foregoing document was filed through the NLRB E-Filing system and, in accordance with NLRB Rules and Regulations Section 102.114(i), and by email to Your Honor, counsel for the Region, and counsel for Charging Party:

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